

United States District Court

**EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DEANNA DWYER, INDIVIDUALLY	§	
AND AS NEXT FRIEND FOR	§	
BLAKE DWYER, A MINOR	§	
V.	§	CASE NO. 4:09-CV-198
	§	(Judge Schneider/Judge Mazzant)
CITY OF CORINTH, TEXAS, A TEXAS	§	
HOME RULE CITY, DEBRA BRADLEY,	§	
CHIEF OF POLICE OF THE CITY OF	§	
CORINTH, KEVIN TYSON, A POLICE	§	
OFFICER FOR THE CITY OF CORINTH,	§	
CRAIG HUBBARD, A POLICE OFFICER	§	
FOR THE CITY OF CORINTH, CARSON	§	
CROWE, A POLICE OFFICER FOR THE	§	
CITY OF CORINTH, AND TASER	§	
INTERNATIONAL, INC.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636. On October 23, 2009, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants City of Corinth, Texas, Debra Bradley, Kevin Tyson, Craig Hubbert, and Carson Crow's Second Rule 12(c) Motion for Judgment on the Pleadings (Dkt. #50) should be granted in part and denied in part.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, this Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.

It is, therefore, **ORDERED** that

1. The motion to dismiss as to Plaintiff's claims against Chief Bradley in her official capacity is **GRANTED**.
2. The motion to dismiss as to Plaintiff's claims against Chief Bradley in her individual or personal capacity is **GRANTED**.
3. The motion to dismiss as to Plaintiff's claim for excessive force against officers Tyson, Hubbert and Crow is **DENIED**.
4. The motion to dismiss as to Plaintiff's claim for failure to intervene against officers Tyson, Hubbert and Crow is **DENIED**.
5. The motion to dismiss as to Plaintiff's claims for unlawful seizure/improper arrest against officers Tyson, Hubbert and Crow is **GRANTED**.
6. The motion to dismiss as to Plaintiff's § 1983 claims for improper training, supervision, discipline, and retention against the City of Corinth is **DENIED**.
7. The motion to dismiss as to Plaintiff's Texas Tort Claims Act claims against officers Tyson, Hubbert and Crow is **GRANTED**.
8. The motion to dismiss as to Plaintiff's Texas Tort Claims Act claims against the City of Corinth is **GRANTED**.
9. The motion to dismiss as to Plaintiff's § 1983 claims for improper training, supervision, discipline, and retention against the City of Corinth for punitive or exemplary damages is **GRANTED**.
10. The motion to dismiss as to Plaintiff's state-law claims against the City of Corinth for punitive or exemplary damages is **GRANTED**.

The following causes of action remain:

1. Plaintiff's claim for excessive force against officers Tyson, Hubbert and Crow.
2. Plaintiff's claim for failure to intervene against officers Tyson, Hubbert and Crow.
3. Plaintiff's § 1983 claims of improper training, supervision, discipline, and retention against the City of Corinth.

IT IS SO ORDERED.

SIGNED this 17th day of November, 2009.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE